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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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February 15, 1995

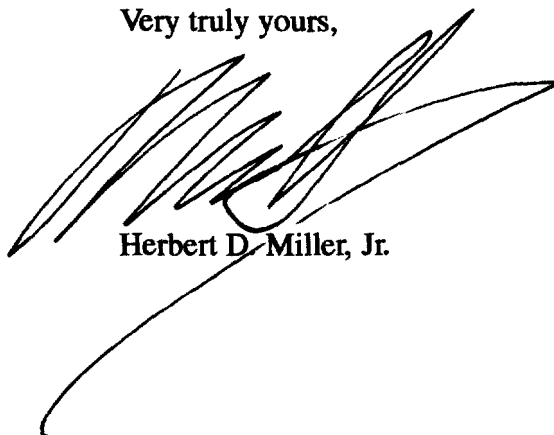
William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Transmitted herewith, on behalf of The Wireless Telecommunications Bureau and Telephone and Data Systems, Inc., are their Comments on the Petition of Ameritel to Intervene in CC Docket Number 94-136.

Very truly yours,



Herbert D. Miller, Jr.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Application of

ELLIS THOMPSON CORPORATION

For facilities in the Domestic Public
Cellular Radio Telecommunications
Service on Frequency Block A in Mar-
ket No. 134, Atlantic City, New Jersey.

CC Docket No. 94-136

DOCKET FILE COPY ORIGINAL

To: Honorable Joseph Chachkin
Administrative Law Judge

COMMENTS ON PETITION TO INTERVENE

The Wireless Telecommunications Bureau (Bureau) and Telephone and Data Systems, Inc. (TDS) file herewith, by their attorneys, their Comments on the Petition to Intervene filed by Ameritel on February 6, 1995.

According to the Ameritel Petition, Ameritel is not itself the fifth-selected MX applicant for the Atlantic City non-wireline authorization. It is, instead, "an Ohio general partnership that is the successor-in-interest to Ameritel, Inc." (Petition, p. 2, n. 7) Aside from the Declaration of Richard Rowley associated with the Petition, it is unsupported.¹

In order to show that Ameritel is entitled to participate in this proceeding in the shoes of an applicant for the Atlantic City non-wireline authorization, Ameritel must establish that it is the "successor in interest" to that applicant.²

¹ That Declaration merely avers that Mr. Rowley is a "general partner in Ameritel ('Ameritel'), successor-in-interest to Ameritel, Inc.," that he had read the associated Petition to Intervene, and that "except for those facts of which official notice may be taken by the Commission, all facts set forth in the foregoing Petition are true and correct of my own personal knowledge and belief."

² Under Section 22.944(a), "the transfer of any interest in any application for initial authorization to operate a cellular system is prohibited" with certain exceptions specified in Section 22.944(b). There is no indication in the Petition to Intervene that any of the listed exceptions is applicable.

The Bureau and TDS have no independent knowledge of the chain of succession, if any, between Ameritel, Inc. and the Ohio general partnership known as Ameritel. Nor do they have any independent knowledge of the extent to which the ownership of the two entities is the same or different. However, based on the information which they have been able to obtain, there are substantial questions whether Ameritel is, in fact, the successor in interest as it claims to be:

1. An application for the Atlantic City non-wireline authorization was filed under the name of Ameritel, Inc., an Ohio corporation, on February 6, 1986 (Attachment A to these Comments).
2. Fifteen days **later**, on February 21, 1986, Ameritel, Inc. apparently was first incorporated in Ohio (Attachment B to these Comments).
3. On or about December 31, 1987, Ameritel, Inc. entered into an Agreement and Plan of Reorganization with Metrotec, Inc., a Delaware corporation (Attachment C to these Comments), under which "Ameritel shall be merged into Metrotec in accordance with the laws of the States of Ohio and Delaware, and Metrotec, as the surviving corporation, shall continue its corporate existence under the laws of the State of Delaware" (Attachment C, ¶12). With the merger, "the separate existence of Ameritel shall cease and Ameritel shall be merged with and into Metrotec." (*Id.*, ¶12).
4. On January 19, 1988, Ameritel, Inc. requested Commission consent to the *pro forma* assignment of a cellular authorization held by Ameritel, Inc. from Ameritel, Inc. to Ameritel, Inc. (not Metrotec). The transaction was described in the application as follows:

"The instant proposed assignment involves only an Ameritel, Inc. proposal to change its state of incorporation, from Ohio to Delaware. The change in its state of incorporation will be accomplished by a statutory merger, under Delaware and Ohio law, of the Ohio corporation into a Delaware Corporation formed for the sole purpose of receiving all the assets and liabilities of the Ohio corporation and thereby accomplish the change in state of incorporation.

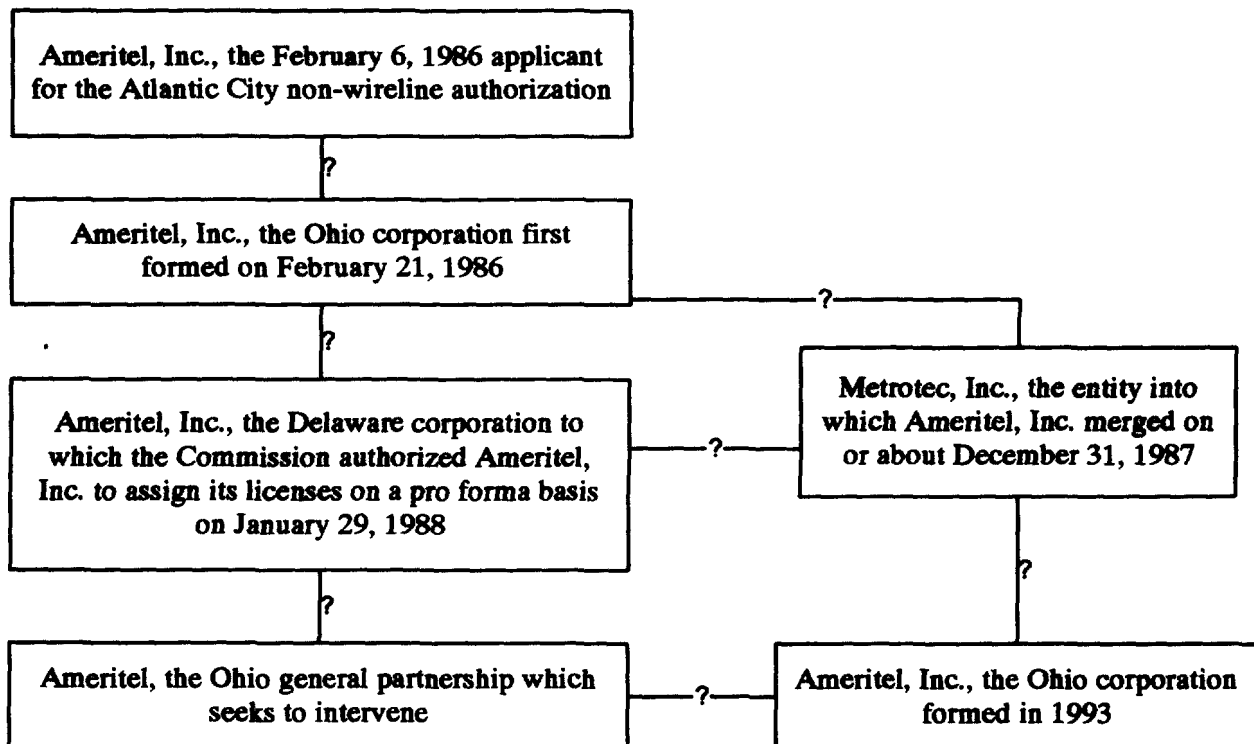
There will be no *de facto* or *de jure* change in control of Ameritel, Inc. The shareholders of the Delaware Corporation and their respective ownership interests will be exactly the same as in the Ohio Corporation. The purpose of the change is to permit the shareholders, officers and directors of the Ameritel, Inc. more liberal provisions of Delaware Corporate law." (Attachment D to these Comments, Exhibit 2).

The application makes no reference to the merger of Ameritel, Inc. into Metrotec, Inc. Commission consent was granted on January 29, 1988 (Attachment D to these Comments).

5. On January 21, 1988, Metrotec, Inc. Articles of Incorporation were filed with the Delaware Secretary of State (Attachment E to these Comments).
6. On June 15, 1988, Ameritel, Inc., the Ohio corporation, was merged into Metrotec, Inc., under the name Metrotec, Inc., a Delaware corporation (Attachment F to these Comments)
7. On July 22, 1993, a new Ohio corporation, named Ameritel, Inc. was formed (Attachment G to these Comments).

The present Petition to Intervene makes no reference to any of the events discussed above.

What is the Ameritel, Inc. Line of Succession?



Whether the general partnership named Ameritel which now seeks to intervene is the "successor in interest" to the Ameritel, Inc., which filed an application for the Atlantic City non-wireline authorization fifteen days before an entity of that name came into existence as an Ohio corporation, is far from clear. The intervening 1988 merger of Ameritel, Inc. into Metrotec, Inc., with the resultant termination of Ameritel, Inc.'s existence, and the subsequent formation in 1993 of a new Ohio corporation with the name of Ameritel, Inc., make the situation even less clear. The diagram above summarizes these events, and indicates at least some of the questions which they raise. In these circumstances, the bare assertion that Ameritel is the successor in interest to the Atlantic City applicant which filed under the name Ameritel, Inc., with no information concerning either the nature of the succession or the ownership of the entities involved, is insufficient. Unless Ameritel can clarify its status and its relationship to the Atlantic City applicant, and demonstrate that under applicable Commission precedent it is, indeed, the successor in interest to the entity which filed an application for the Atlantic City authorization on February 6, 1986 under the name Ameritel, Inc., and that it has substantially the same ownership, its Petition to Intervene should be denied.

In view of the above, we ask that Ameritel be directed to make a complete showing with respect to its alleged status within five days, and that the parties be given four business days in which to respond to that showing.

Respectfully submitted,

TELEPHONE AND DATA SYSTEMS, INC.

By

/s/


Alan Y. Naftalin
Alan Y. Naftalin

By

/s/


Herbert D. Miller, Jr.
Herbert D. Miller, Jr.

KOTEN & NAFTALIN
SUITE 1000
1150 CONNECTICUT AVENUE, N. W.
WASHINGTON, D. C. 20036

CHIEF, WIRELESS TELECOMMUNICATIONS BUREAU

By /s/ Joseph Paul Weber
Joseph Paul Weber

By /s/ Terrence E. Reideler
Terrence E. Reideler

Their attorneys

February 15, 1995

ATTACHMENT A

**Exhibit 1 to Ameritel, Inc. Application for a Cellular Authorization in Daytona Beach, Florida,
Reflecting Ameritel's Other Pending Applications at page 3**

A P P L I C A N T ' S O W N E R S H I P A N D
C O M M U N I C A T I O N S I N T E R E S T S

Applicant is an Ohio corporation with its principal place of business at 1600 South Dixie Highway, Boca Raton, Florida 33432. The names, addresses, principal businesses, and percentages of voting stock held by Applicant's shareholders are as follows:

<u>Name & Address</u>	<u>Percentage of Stock</u>	<u>Principal Business</u>
Gene A. Folden 1600 South Dixie Highway Boca Raton, FL 33432	12.25	Radio Common Carrier
Thomas E. Rawlings 790 Kirkwall Copley, OH 44321	12.25	Attorney
Richard D. Rowley 590 Tote Road Austinburg, OH 44010	12.25	Radio Broadcasting; Radio Common Carrier
David C. Rowley 102 C. Pomona Drive Geneva, OH 44041	12.25	Radio Broadcasting; Radio Common Carrier
Michael L. Robinson 277 South Broadway Akron, OH 44308-1449	25	Attorney
Howard E. Mentzer 277 South Broadway Akron, OH 44308-1449	10	Attorney
Patrick J. Hart 277 South Broadway Akron, OH 44308-1449	10	Attorney
Richard F. Battagline 500 First National Tower Akron, OH 44308-1471	6	Attorney

All of the stockholders of Applicant are United States citizens.

The following lists the businesses in which Applicant's stockholders own at least a 5% interest. These businesses are either subsidiaries or affiliates of Applicant under Section 22.12(a)(1) of the Commission's Rules.

<u>Name</u>	<u>Principal Business</u>
Metro-Page of Florida	Radio common carrier
Metrotec of Arizona, Inc.	Radio common carrier
Radio Enterprises of Kentucky, Inc.	Radio common carrier
Selective Paging Corporation	Radio common carrier
Metro-Page of Columbus, Inc.	Radio common carrier

In addition, Applicant is interested, directly or indirectly, in the radio stations listed below:

<u>Licensee</u>	<u>Call Sign & Service</u>	<u>Location</u>
Metro-Page of Florida	KNKC651; PLMS KOR398; PLMS KOR710; PLMS KOR711; PLMS KOR709; PLMS KOR706; PLMS KOR707; PLMS KOR708; PLMS	Boca Raton, FL Tampa, FL Ft. Lauderdale, FL Jacksonville, FL Orlando, FL Miami, FL W. Palm Beach, FL Hollywood, FL
Metrotec of Arizona, Inc.	KKB617; PLMS	Phoenix, AZ
Radio Enterprises of Ohio, Inc.	WFUN (AM) WKEO-FM KUS280; PLMS KPA317; PLMS KOR889; PLMS KOR962; PLMS KNKD925; PLMS KOR888; PLMS	Ashtabula, OH Ashtabula, OH Northeast, OH Tucson, AZ Erie, PA Cleveland, OH Phoenix, AZ Ashtabula, OH
Selective Paging Corporation	KEK276; PLMS	Buffalo, NY
Radio Enterprises of Kentucky, Inc.	WPKY (AM) WKYW-FM WXR901; PLMS KNKI508; PLMS	Frankfort, KY Frankfort, KY Louisville/ Lexington, KY Louisville, KY
Metro-Page of Columbus, Inc.	KWU243; PLMS	Columbus, OH

In addition, Gene A. Folden, Thomas E. Rawlings, Richard D. Rowley and David C. Rowley are officers and shareholders of Metrotel, Inc. ("Metrotel"), Metrotel has an 11% partnership interest in Akron Cellular Telephone Company, the non-wireline cellular licensee for the Akron, Ohio MSA. Metrotel has a 7.7% partnership interest in Youngstown Cellular Telephone Company, the non-wireline cellular licensee in Canton, Ohio.

Pending Applications

On February 6, 1986, Applicant filed applications for authorization to construct cellular systems in the following markets:

Trenton, New Jersey MSA
Santa Rosa-Petaluma, California MSA
Santa Barbara-Santa Maria-Lompoc, California MSA
Salinas-Seaside-Monterrey, California MSA
Pensacola, Florida MSA
Erie, Pennsylvania MSA
Atlantic City, New Jersey MSA

Applicant has no interest, direct or indirect, in any other pending application proposing facilities to be licensed under Part 22 of the Commission's Rules within 40 miles of the cellular system proposed hereby.

Ownership in Competing Applicants and Agreements to Settle

None of Applicant's shareholders hold any direct ownership interest in any other cellular application that would be considered mutually exclusive with this application. Furthermore, to the best of their knowledge, none of Applicant's shareholders hold a five percent or greater interest in any publicly-traded corporation which may be filing a mutually

exclusive cellular application. Accordingly, Applicant complies with the ownership restrictions contained in Section 22.921(b) of the Commission's Rules, 47 C.F.R. § 22.921(b).

Applicant recognizes that post-filing settlements with other mutually exclusive applicants may be an appropriate way of fostering the Commission's objective of providing high quality cellular service as quickly as possible. Accordingly, Applicant may enter into such agreements after filing. Applicant has not, however, entered into any pre-filing settlement agreements with other applicants.

ATTACHMENT B

**Information Obtained from CT Corporation System showing Ameritel, Inc.
Date of Incorporation in Ohio**



CT System

CT Corporation System
1025 Vermont Ave., N.W.
Washington, D.C. 20005
202 393 1747
Fax 202 393 1760

Ameritel, Inc. (file #850485)
Incorporated: 7-22-93
Frame #: ARF H647 1275
City where principal office is located: Dayton
County: Montgomery
Agent: William H. Turner
Registered Office: 110 N Patterson Blvd
Dayton, OH 45402
Name of filer: Ira P Quickly
Authorized shares: 1000, No Par Value,
Common

What we know of Ameritel, Inc. is that it incorporated on 2-21-86 and merged out of existence on 4-27-88 (survivor was Metrotech, Inc.) Metrotech, Inc. is NOT licensed to do business in the state of Ohio. There is, however, an entity by the name of Metrotech Productions Inc. currently registered with the state. I have attached their print-out as well. We will know more detailed information once the certified copies have returned.

Let me know if you have any questions.

Have a good afternoon.

*You can also obtain detailed information on the filings that an entity has made by ordering a




CT System

long form good standing certificate from the state. They are \$5 and \$10, depending on whether or not a merger has taken place. Let me know if you are interested.

CT Corporation System
1025 Vermont Ave., N.W.
Washington, D.C. 20005
202 393 1747
Fax 202 393 1760

ATTACHMENT C

Ameritel, Inc. - Metrotec, Inc. Agreement and Plan

A large black rectangular redaction mark covers the text following "Agreement and Plan".

G0398-0163

AGREEMENT AND PLAN OF REORGANIZATION

CERTIFICATE OF MERGER

Gene A. Folder, President and Thomas E. Rawlings, Secretary, of Metrotec, Inc., a Delaware Corporation, do hereby certify that pursuant to the provisions of Section 228 of the Delaware Code, all of the directors of Metrotec, Inc., approved the adoption of an Agreement and Plan of Reorganization by their unanimous written consent on December 30, 1987; thereafter on December 30, 1987, the holders of all the outstanding common shares of the corporation approved the adoption of the said Agreement and Plan of Reorganization by their unanimous written consent.

The undersigned as duly authorized officers do hereby affix their signatures, on the 30th day of December, 1987.

Metrotec, Inc.

By: 

Gene A. Folden, President

By: 

Thomas E. Rawlings, Secretary

AGREEMENT
AND
PLAN OF REORGANIZATION

THIS AGREEMENT AND PLAN OF REORGANIZATION dated as of the 31st day of December, 1987, by and among Ameritel, Inc., an Ohio corporation ("Ameritel"), and Metrotec, Inc. a Delaware corporation ("Metrotec").

WITNESSETH:

WHEREAS, Ameritel is a corporation duly organized and validly existing under the laws of the State of Ohio, and has an authorized capital of 750 shares of Common Stock, no par value, of which 32 shares of Common Stock are issued and outstanding; and

WHEREAS, Metrotec is a corporation duly organized and validly existing under the laws of the State of Delaware, having been incorporated on December 30, 1987; and

WHEREAS, the respective boards of directors of Ameritel and Metrotec deem it in the best interests of their respective corporations and stockholders that Ameritel be merged with and into Metrotec on the terms and conditions hereinafter set forth and in accordance with the laws of the States of Ohio and Delaware which permit such merger; and

WHEREAS, the respective boards of directors of Ameritel and Metrotec have approved and adopted this Agreement as a plan of reorganization that qualifies under Section 368(a)(9)(F) of the Internal Revenue Code, as amended.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and of the benefits to accrue to

Ameritel and Metrotec hereunder, the parties hereto agree, subject to the approval of the stockholders of Metrotec as required by law and the satisfaction of the other conditions contained herein, that Ameritel shall be merged into Metrotec pursuant to the laws of the States of Ohio and Delaware, and do further agree, prescribe and set forth the terms and conditions of the merger and the method of carrying the same into effect as follows:

1. THE MERGER. The merger of Ameritel into Metrotec (the "Merger") shall be effected by the filing of a certificate of merger in substantial the form Exhibit A attached hereto (the "Certificate of Merger") with the Secretaries of the States of Ohio and Delaware. The term "Effective Date" as used herein shall mean the day on which the Certificate of Merger is filed with the Secretary of State of the State of Ohio and the Secretary of State of the State of Delaware, and the term "Effective Time" shall mean the time when the Certificate of Merger is so filed and the Merger is effective. The Effective Date shall be a date not later than seven (7) business days following the date on which final regulatory approval of the transactions contemplated herein has been received in accordance with paragraph 5 hereof, or on such date as shall be mutually agreed upon by the parties hereto.

2. MANNER OF THE MERGER. Ameritel shall be merged into Metrotec in accordance with the laws of the States of Ohio and

6077-0115

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Delaware, and Metrotec, as the surviving corporation, shall continue its corporate existence under the laws of the State of Delaware. Ameritel and Metrotec are hereinafter sometimes referred to as the "Constituent Corporations," and Metrotec, the party to the Merger which will survive the Merger, is hereinafter sometimes referred to as the "Surviving Corporation."

3. EFFECTS OF THE MERGER. At the Effective Time of the Merger:

a. The separate existence of Ameritel shall cease and Ameritel shall be merged with and into Metrotec;

b. The Article of Incorporation of Metrotec, as in effect immediately prior to the Effective Time of the Merger, shall remain the Articles of Incorporation of the Surviving Corporation;

c. The Code of Regulations of Metrotec, as in effect immediately prior to the Effective Time of the Merger, shall remain the Code of Regulations of the Surviving Corporation;

d. The directors of Metrotec in office at the Effective Time of the Merger shall become the directors of the Surviving Corporation, each of such directors to hold office, subject to the applicable provisions of the Code of Regulations of the Surviving Corporation, until the next annual meeting of stockholders of the Surviving Corporation and until his successor has been elected and qualified;

(c) 1784

e. The officers of Metrotec in office at the Effective Time of the Merger shall become the officers of the Surviving Corporation, each of such officers to hold office, subject to the applicable provisions of the Code of Regulations of the Surviving Corporation, until his successor has been duly elected and qualified; and

f. Except as herein specifically set forth, the Surviving Corporation shall possess all of the rights, privileges, powers and franchises, and be subject to all the restrictions, disabilities and duties of each of the Constituent Corporations, and all the rights, privileges, powers and franchises of each of the Constituent Corporations in all property, real, personal and mixed, and all debts due to any of the Constituent Corporations on whatever account, shall be vested in the Surviving Corporation; and all property rights, privileges, powers and franchises, and all and every other interest shall thereafter be the property of the Surviving Corporation as they were of the respective Constituent Corporations, and the title to any real estate, or interest therein, vested by deed or otherwise in either of the Constituent Corporations shall not revert or be in any way impaired by reason of the Merger. Except as hereinafter specifically set forth, the Surviving Corporation shall be responsible and liable for all the liabilities and obligations of the Constituent Corporations, and any claim existing or action

6017-01

- 5 -

or proceeding pending by or against either of the Constituent Corporations may be prosecuted as if the Merger had not taken place, and the Surviving Corporation had been substituted in its place. Neither the rights of creditors nor any liens upon the property of either of the Constituent Corporations shall be impaired by the Merger, and, except as hereinafter specifically set forth, all debts, liabilities and duties of the respective Constituent Corporations shall thenceforth attach to the Surviving Corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it; and

g. The statutory agent for service of process of the Surviving Corporation shall be the Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, County of New Castle.

4. TERMS OF THE MERGER. The basis for converting and exchanging the issued and outstanding shares of common stock of the Constituent Corporations will be as follows:

a. Each share of Common Stock of Ameritel issued and outstanding at the Effective Time (other than treasury shares) shall, as of the Effective Time, by virtue of the Merger and without any action on the part of the holder, be converted and exchanged into one share of Common Stock of Matrotec.

b. No fractional shares of Common Stock of Matrotec shall be issued.

5. REGULATORY APPROVALS. The consummation of the transactions contemplated herein are contingent upon and subject to the unrestricted prior approval of the Federal Communications Commission ("FCC"). Ameritel and Metrotec shall be responsible for the timely filing of all appropriate applications with the FCC. The parties agree to cooperate in, and to provide all information required for, the prompt filing and diligent prosecution of such applications, and further agree that pending receipt of all such necessary approvals, Metrotec shall not exercise or be deemed to exercise any control of the business or operations of Ameritel. All costs associated with the making and processing of applications for regulatory approval of the transactions contemplated herein, including attorneys' fees, shall be borne by Metrotec.

6. CLOSING. As soon as reasonably practicable after the receipt of all regulatory approvals required hereunder, the parties shall meet at the offices of Metrotec, 1600 South Dixie Highway, Boca Raton, Florida 33431, in order to exchange certificates, opinions, and other documents and instruments required hereunder, and to consummate the transactions contemplated herein. Upon satisfaction of all of the terms, conditions and provisions of the Agreement, Ameritel and Metrotec shall execute the Certificate of Merger, and shall thereupon file or cause to be filed the Certificate of Merger in accordance with the laws of the States of Ohio and Delaware.

- 7 -

(1) 315-1170

7. Metrotec agrees and consents to be sued and served with process in the State of Ohio, and agrees and consents to the irrevocable appointment of the Secretary of State of Ohio as its agent to accept service of process in any proceeding in the State of Ohio or to enforce against it any obligation of Ameritel, or to enforce the rights of a dissenting shareholder of Ameritel.

Ameritel, Inc.,
an Ohio Corporation

By 
Gene A. Folden, President

Metrotec, Inc.,
a Delaware Corporation.

By 
Gene A. Folden, President

60105-111

AFFIDAVIT OF PERSONAL PROPERTY

STATE OF OHIO

:SS

COUNTY OF SUNMIT

Thomas E. Rawlings, being first duly sworn,
deposes and says that ~~that~~ he is ~~president, vice-president, secretary or treasurer~~ (strike
out words not applicable) of Ameritel, Inc.;
that this affidavit is made in compliance with section 1701.86, ~~1702.47, or 1703.17~~ (strike
out sections not applicable) of the Ohio Revised Code; That said corporation ~~has personal~~
~~senior property only in~~ County(ies)
~~It~~ has no personal property in any county in the State of Ohio (strike out phrase not
applicable); and that the net assets of said corporation are sufficient to pay all personal
property taxes accrued to date.

Thomas E. Rawlings

Sworn to me and subscribed in my presence this 2nd day of Feb., 1988

Carla J. Gregor
Notary Public

Commission expires Aug 31, 1990

SEAL

